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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT FOR THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE STEFANY MILEY,
DISTRICT JUDGE,

Respondents.

and

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNV-TV; LOS
ANGELES TIMES

Case No.: 76023

D.C. Case No.: A-17-764030-W

Cons. Case No.: A-17-764169-W

**PETITIONER, LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S, MOTION TO
STRIKE REAL PARTY IN
INTEREST LAS VEGAS REVIEW-
JOURNAL'S RESPONSE TO
PETITIONER'S EMERGENCY
PETITION FOR WRIT OF
PROHIBITION PURSUANT TO
NRAP 21 AND 27(e) AND
APPENDIX.**

Appeal from the Eighth Judicial District
Court, The Honorable Stefany Miley
Presiding.

MAC:14687-102 3430585_1

COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS LLC
D/B/A KTNV-TV; WP COMPANY
LLC D/B/A THE WASHINGTON
POST AND LAS VEGAS REVIEW-
JOURNAL,

Real Parties in Interest.

**PETITIONER, LAS VEGAS METROPOLITAN POLICE
DEPARTMENT’S, MOTION TO STRIKE REAL PARTY IN INTEREST
LAS VEGAS REVIEW-JOURNAL’S RESPONSE TO PETITIONER’S
EMERGENCY PETITION FOR WRIT OF PROHIBITION PURSUANT TO
NRAP 21 AND 27(e) AND APPENDIX.**

I. INTRODUCTION

Real Party in Interest, the Las Vegas Review-Journal (“LVRJ”), improperly included documents within its appendix to its Response that either were filed after the May 29th hearing or entirely absent from the District Court’s record. Similarly, LVRJ’s Response relies on the unauthorized documents, in addition to supplemental information and additional arguments that were never before the District Court at the May 29th hearing. Finally, this Court required LVRJ to file and serve its Response no later than 4:00 p.m. on June 18, 2018. Although LVRJ submitted its Response through the e-filing system on June 18, 2018 at 3:25 p.m., LVRJ did not serve a copy of the Response and appendix until 4:36 p.m. As such, Petitioner, Las Vegas Metropolitan Police Department (“LVMPD”), urges this Court to strike LVRJ’s Response and Appendix in its entirety. If the Court permits LVRJ to re-file a Response, the Court should extend LVMPD’s deadline for its Reply brief.

II. LEGAL ARGUMENT

LVRJ inappropriately included documents, information, and arguments not maintained within the record of the District Court regarding the June 13th Order, and, therefore, the Court should strike LVRJ's Response in its entirety from. It is well established that nothing but what constitutes the records of the court below can be sent up to the appellate court. *Davis v. Packard*, 31 U.S. 41, 43-44 (1832); *see also Wynn Resorts, Limited v. Eighth Judicial Dist. Ct.*, 399 P.3d 334, n.3 (2017) (refusing to consider additional arguments made by respondents because the district court did not base its findings on those arguments). The record on appeal is made up of papers from the court below and may not be supplemented by papers to the Supreme Court. *Clack v. Jones*, 62 Nev. 72, 75, 140 P.2d 580, 581 (1943); *see also* NRAP 10 (defining record to include papers and exhibits filed in the district court, transcript of proceedings, court minutes and docket entries). Additionally, LVRJ failed to timely serve LVMPD in accordance with this Court's Order. For these reasons, LVMPD requests the Court to strike LVRJ's Response and Appendix.

A. THE COURT SHOULD STRIKE ALL THE DOCUMENTS IN LVRJ'S APPENDIX THAT ARE NOT PART OF THE DISTRICT COURT'S RECORD CONCERNING THE MAY 29TH HEARING.

The instant Writ Petition pertains to the June 13th Order concerning the production of lists of responsive records, creation of a certification; and production of an FBI evidence log. See Emergency Petition for Writ of Prohibition on file herein. Despite the limited scope of the Writ Petition, LVRJ erroneously included unauthorized documents in its appendix: (1) an email exchange regarding LVRJ's improper request for lists of information that occurred on June 13, 2018 (RA 087-094); (2) AviSight records that were produced on June 13, 2018 (RA 037-086); and (3) its supplemental brief regarding NRS 239.011 filed on June 1, 2018 (RA 003-036). As a matter of law, these documents, which either were filed after the hearing or entirely absent from the District Court's record, cannot now serve to influence the June 13th Order. See *Carson Ready Mix, Inc. v. First Nat'l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal."); cf. *State ex rel. Sisson v. Georgetta*, 78 Nev. 176, 178, 370 P.2d 672, 673 (1962) (striking documents in a writ petition proceeding that were not part of the underlying court's record). In essence, if this Court were to allow LVRJ to maintain documents in its appendix that were not presented to the District Court, this Court would be deciding different

issues based upon different information. LVRJ's position to allow this new information would violate the basic notion that new issues cannot be raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52–53, 623 P.2d 981, 983–984 (1981).

B. THE COURT SHOULD STRIKE LVRJ'S RESPONSE IN ITS ENTIRETY.

In addition to intertwining these documents within its Response, LVRJ also included information and arguments on: (1) LVMPD's fourth production of records on May 30, 2018; (2) LVMPD's fifth production of records on June 6, 2016; (3) LVMPD's sixth production of records on June 13, 2018; and (4) for the first time, LVMPD's appeal is moot. *See* Response at pp. 11-14; 22; 28-29; and 31. As indicated above, LVRJ cannot submit information to the Supreme Court that was not directly before the lower court. *See* NRAP 10; *Carson Ready Mix, Inc.*, 97 Nev. at 476, 635 P.2d at 277. LVRJ is also prohibited from raising new issues for the first time on appeal. *Brown*, 97 Nev. at 52-53, 623 P.2d 983-984.

More importantly, this Court explicitly ordered LVRJ to serve a copy of its Response no later than 4:00 p.m. on June 18, 2018 on Petitioners. *See* Supreme Court Order filed June 11, 2018. Service may be effectuated by electronic means. NRAP 25(c)(1)(D). The Rules also provide “[w]hen reasonable, considering such

factors as the immediacy of the relief sought, distance, and cost, service on a party shall be by a manner at least as expeditious as the manner used to file the paper with the court.” NRAP 25(c)(2). LVRJ served a copy of its Response at 4:36 p.m.—over an hour after it submitted its brief for filing. See Email dated June 18, 2018 attached hereto as **Exhibit 1**. Thus, LVRJ failed to serve its Response in an expeditious manner pursuant to the Rules and in accordance with this Court’s Order. Thus, LVRJ’s Response should be stricken. If this Court is inclined to permit LVRJ to re-file its response, LVMPD requests that the Court extend the Reply brief deadline accordingly.

III. CONCLUSION

The Court should strike the unauthorized documents of LVRJ’s appendix from RA 003-094. As a matter of law, these documents are not properly before this Court because they are not part of the District Court’s record concerning the May 29th hearing. Furthermore, LVRJ’s Response relies on the unauthorized documents, in addition to other information and arguments never presented to the District Court. LVRJ also failed to timely serve a copy of its Response upon LVMPD. Thus, LVMPD urges this Court to strike LVRJ’s Response. Finally, if

the Court permits LVRJ to re-file a Response, LVMPD requests that its Reply brief deadline be extended in accordance with the Court's previous timeline.

Dated this 19th day of June, 2018.

MARQUIS AURBACH COFFING

By: /s/ Jackie V. Nichols
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S, MOTION TO STRIKE** was filed electronically with the Nevada Supreme Court on the 19th day of June, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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I further certify that I served a copy of the **PETITIONER, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S, MOTION TO STRIKE** via U.S. Mail, postage prepaid, to the following addresses:

Honorable Stefany A. Miley
Eighth Judicial District Court
Department 23
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

/s/ Leah Dell
An employee of Marquis Aurbach Coffing

Exhibit 1

From: pharan@nvlitigation.com
Sent: Monday, June 18, 2018 4:36 PM
To: Jackie V. Nichols; Nick Crosby; Craig Anderson; Shiroff, Justin A.; Tasca, Joel
Cc: maggie; Alina; Krista Busch; Suzanne Boggs
Subject: LVMPD v. EDJC (NSC # 76023) - Response to Petitioner's Emergency Petition for Writ of Prohibition Pursuant to NRAP 27 and 27(e)
Attachments: WRIT - 2018.06.18 LVRJ's Response in Opposition to Emergency Petition.pdf; WRIT - 2018.06.18 LVRJ's Appendix (Response).pdf

Good afternoon.

I am writing on behalf of Ms. McLetchie. Attached please find a courtesy copy of the Las Vegas Response to Petitioner's Emergency Petition for Writ of Prohibition Pursuant to NRAP 27 and 27(e) and its Appendix that have been submitted to the Nevada Supreme Court.

Thank you,

Pharan Burchfield

Paralegal



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